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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

W. P.(S) No. 4697 of 2006

Petitioner : Dr. R. K. Sharma

Versus

Respondents : State of Chhattisgarh & others

Post for order on 15th May, 2007.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (S) No. 4697 of 2006

Petitioner		Dr. R.K. Sharma, Aged about 43 years, S/o. Late Shri B.S. Sharma, R/o. Forestry Guest House, Guru Ghasidas University, Bilaspur, Distt. Bilaspur, CG.
	Versus	
Respondents	1.	State of Chhattisgarh, Through Secretary Higher Education Department, D.K.S. Bhawan, Mantralaya, Raipur, CG.
	2.	The Vice Chancellor, Guru Ghasidas University, Koni, Bilaspur, CG.
	3.	The Registrar, Guru Ghasidas University, Koni, Bilaspur, CG.
	4.	The Chairman, University Grants Commission, Bahadur Shah Zafar Marg, New Delhi – 110 02

WRIT PETITION UNDER ARTICLES 226/227 OF THE COSTITUTION OF INDIA

SB: Hon'ble Mr. Justice **Satish K. Agnihotri**

Shri D. Shashidharan, Advocate for the petitioner.

Shri Satish Gupta, Dy. Govt. Advocate for respondent No.1.

Shri Neeraj Choubey, Advocate for respondents no. 2 and 3.

Shri Thakur Vijay Singh, Advocate for respondent No.4.

ORDER

(Passed on this 15th day of May, 2007)

1. The petitioner has filed this petition under Article 226/227 of the Constitution of India, challenging the order dated 27-7-2006 (Annexure P/1), whereby the engagement of the petitioner, as Yoga Instructor, was put to an end with effect from 28-6-2006, on the ground that the prescribed period /grant by UGC has come to an end.

2. The brief facts, in nutshell, are that the University Grants Commission (for short, "UGC"), New Delhi introduced a scheme (Annexure P/2) for promotion of Yoga Education and Practice and Positive Health in Universities (for short, "the Scheme"). For launching the Scheme, it is provided in Clause 4 of the scheme that the UGC will provide grants to the

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selected Universities up to the end of X Plan period only i.e., 31-3-2007. Thereafter, the Scheme is required to be taken over by the concerned Universities under its maintenance budget. Pursuant to the scheme, the Registrar of the respondent No.2/University sent a proposal to the UGC for establishment of Yoga Centre at Bilaspur, and prayed for release of initial financial assistance.

3. In response to the proposal for establishment of Yoga Centre, sent by the respondent No.2, the UGC had accorded the financial assistance of Rs.1,00,000/- vide letter dated 30-8-2000 (Annexure P/4), mentioning that the honorarium to the instructors will be paid by the Commission. It was further provided that the University has to maintain the centre after the expiry of IX Plan period on 31-3-2002. The University may appoint two Yoga Instructors and send the joining reports etc., to the Commission for further necessary action.
4. The University vide advertisement (Annexure P/6) invited applications from the eligible candidates for the post of Yoga Instructor with fixed honorarium Rs.6,500/- per month, mentioning that the post is purely temporary under UGC Scheme. The petitioner was appointed vide order dated 21-6-2001 (Annexure P/8), initially for a period of one year or till the permission is granted by the UGC. The petitioner joined his duties on 29-6-2001.
5. Thereafter, vide letter dated 9-1-2002 (Annexure P/9) it was communicated by the UGC to the respondent No.2 that "the Commission has decided that all the Yoga Centre established during IX Plan period will be financially supported from full term of 5 years (i.e., even beyond 31-3-2002) from the date of joining of Yoga Instructors and thereafter the scheme may be taken over by the concerned universities in its maintenance budget."
6. The respondent No.2/University vide order dated 19-2-2003 extended the period of engagement of the petitioner as Yoga Instructor from 29-6-2002 to 28-6-2003. Thereafter, vide order dated 17-3-2004 the engagement of

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the petitioner was extended for a period of one year and vide order dated 28-8-2004 for a period of two years. Since the engagement of the petitioner as Yoga Instructor was put to an end vide impugned order dated 27-7-2006 (Annexure P/1) with effect from 28-6-2006, he has filed this petition.

7. The respondents No. 2 and 3 (University) have filed the return, stating that the petitioner was engaged purely on temporary post. The petitioner was not working against the sanctioned post and no sanctioned post of Yoga Instructor is available. The appointment of the petitioner was subject to the grant- in-aid provided by the UGC Scheme. The respondent No.2/University vide letter dated 12-6-2006 (Annexure R-2/2) requested the State Government to provide grant-in-aid so that Yoga Centre may continue after 30-6-2006.

8. Learned counsel for the petitioner submits that it is obligatory on the part of the respondent No.2 University to continue the scheme even after 30.6.2006 under its maintenance budget. The disengagement of the petitioner is not sustainable since the petitioner has attained the age of 45 years and he is age barred for further appointments elsewhere.

9. I have heard Shri D. Shashidharan, learned counsel appearing for the petitioner, Shri Satish Gupta, learned Deputy Government Advocate appearing for the respondent No.1, Shri Neeraj Choubey, learned counsel appearing for the respondents No. 2 and 3 and Shri Thakur Vijay Singh, learned counsel appearing for the respondent No.4.

10. Admittedly, the petitioner was appointed initially for a period of one year w.e.f. 29.6.2001 and the same was continued by subsequent extension letters dated 19.2.2003 and 17.3.2004 for a period of two years. Thereafter, vide letter dated 28.8.2004 (Annexure P/10) the petitioner was appointed for a further period of two years. It was clearly stated in the appointment order itself that the honourarium to the extent of Rs. 6500/- would be paid from the grants received from the U.G.C. The appointment

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of the petitioner, as such, was not on a regular substantive post but was on a temporary post for one year and thereafter continued for one year, and finally further for two years, subject to payment of grants received from the U.G.C. The continuation of the Yoga Teacher and Yoga Centers depends on the financial support from the U.G.C./State Government. The appointment of the petitioner was not against any sanctioned post and as such the question of continuation of his service and the regularization on the said post does not arise.

11. The contention of learned counsel for the petitioner that the petitioner has attained the age of 45 years and it was not possible for him to get the employment elsewhere, has no basis as the petitioner very well knew, in advance, when the appointment of the petitioner was made that his appointment was not in permanent nature and it was only for a period of one year, which was extended for some more years.

12. Clause 4 of the Scheme for promotion of yoga education and practice and positive health in universities reads as under:-

"4. **NATURE OF ASSISTANCE**

The UGC will provide grants to the selected universities up to the end of X Plan period only i.e. 31st March 2007. Thereafter the scheme is required to be taken over by the concerned universities under its maintenance budget. The UGC will provide financial assistant as under:-

4.01 OGA

S.No.	Items	Financial Assistance under the Scheme
1.	Equipment/furnishing	Rs. 1,00,000/-(One-time grant)
2.	Honorarium to instructors – *maximum two (2)*	Rs. 1,80,000/- p.a. @ *Rs. 7500/-p.m.* (Rs. 7500 x 12 x 2 = Rs. 1,80,000/-

The universities may charge Rs. 50/- p.m. pr head as a token fee from the students/teachers non-teaching staff interested to participate in its yoga centre activities for meeting the recurring expenditure.

The minimum qualifications for yoga instructors shall be as under:

1. Post-graduate degree (full time course) in Yoga/Yogic Science/Yoga Therapy/Yoga Studies etc. from a recognized university.

OR

2. Post-graduate diploma (full time of at least one year course) in Yoga/Yogic Science/Yoga Therapy/Yoga Studies etc. from a recognized university or an eminent institution with a well established reputation in the field of yoga, with a minimum experience of two years in yoga teaching and practice."

13. The Scheme does not indicate that it was binding on the concerned University to run the Scheme under its maintenance budget. It is true that it was intended that the U.G.C. would provide grants up to the end of 10th plan only i.e. 31st March, 2007 and thereafter the University has to take over. The taking over involves financial implications and this Court cannot direct the University to continue with the Yoga center and make payments from its maintenance budget.

14. Be that as it may, the appointment of the petitioner was for a tenure/contractual appointment and the petitioner has not acquired any right to the post. The appointment of the petitioner cannot be held as in accordance with the provisions of Articles 14, 16 and 309 of the Constitution of India. This issue is no longer res integra that the appointment made de hors the constitutional scheme of the employment, not in accordance with the Rules framed under Article 309 of the Constitution, is invalid and unconstitutional. The employee so appointed has no right to continuation/regularization on the post.

15. In view of the settled position of law as enunciated by a Constitutional Bench of the Supreme Court in the case of ***Secretary, State of Karnataka and others Vs. Umadevi***[1] daily rated, temporary or ad hoc or contract appointees have no right to the post as their appointment was not in accordance with the

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constitutional scheme of the appointment and not in accordance with any Rules, Regulations, as framed under the proviso to Article 309 of the Constitution of India.

16. Applying the well settled position of law to the facts of the case, it is clear that the appointment of the petitioner on the post of Yoga teacher, for the reasons stated herein above, was not in accordance with law and regulations and not against sanctioned post.

17. Thus this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1 (2006) 4 SCC 1

Thakur